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Richard M. Peterson

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EXAMINER

LAZORCIK, JASON L

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/813,107	Applicant(s) PETERSON ET AL.	
	Examiner JASON L. LAZORCIK	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-65, 69-108, 110, 112-116 and 118-125 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-65, 69-108, 110, 112-116, and 118-125 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 17, 2009 has been entered.

Status of the Claims

Applicants reply dated November 17, 2009, **amends** claims 41, 43-45, 70, 83, 85-87, 110, 113, 115, and 119, **cancels** claims 68, 111, 117, and **adds** new claims 121-125.

In view of the instant amendments, claims 1-40, 66-68, 109, 111, and 117 stand as having been cancelled by Applicant and not claims have been withdrawn from consideration. Therefore, claims 41-65, 69-108, 110, 112-116, and 118-125 are pending for prosecution on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 41-65, 83-108, 110,112, 114-115, 118, and 121-125 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 41 recites the limitation wherein the treated area are “spaced from each other at a distance of at least 10mm”. On a key word search of the Specification as originally filed, the Examiner has found support for a spacing of “between 1 and 30 mm” and “particularly between about 10 mm and 25 mm” see particularly paragraph [0045]. The above noted range of between about 10mm and 25 mm is not equivalent to the presently claimed range of “at least 10mm” and one of ordinary skill would not have been apprised of such a range in view of the originally filed Specification.

A similar observation is made with respect to claims 83 and 121, each of which recites the limitation wherein “the treated areas being spaced from each other at a distance of at least 10mm”.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 41-45,52,56-57,59-64,69-70,81-87,94-95,99-100,102-107,110,112,114-116,118-125 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (US 5,474,095 as evidenced by Hampl et. al. (US 4,739,775).

Allen teaches a paper wrapper for a smoking article comprising annular bands of reduced permeability perpendicular to and spaced along the long axis of a circumscribed tobacco rod (see figure 4).

With respect to claim 41, Allen teaches a paper web having a permeability of greater than about 60 Coresta (col. 4, lines 5-7) and treated regions having a reduced porosity of up to about 10 CU (col. 4, lines 10-11) and space apart from each other at a distance from about 5 to about 40 mm (col. 4, lines 57-61) or "at a distance of at least 10mm" as claimed

As noted in prior Official Communications, it is the Examiner's understanding that both the Coresta (CU) and BMI or "Burn mode index" represent alternate but effectively equivalent measures of porosity and in the instant case specifically describe the porosity of the treated region or bands. To this end, although Allen discloses a Coresta value for the bands which reads upon the claimed range, the reference fails to disclose the treated band porosity as measured by the BMI value.

The patent to Hampl et. al. (US 4,739,775) provides insight into the BMI value and its relation to the CU. The Hampl reference relates the methods of acquiring a BMI

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value in addition to presenting an exemplary comparison between the Coresta value of a wrapper (30 CU) and its equivalent porosity as measured by BMI (14 cm⁻¹) (see Table 1). By the Hampl reference, it is the Examiner's understanding that the CU and BMI are related by an approximate 2:1 ratio (e.g. 30 CU:14 BMI). Therefore absent compelling evidence to the contrary, Allen is understood to teach a treated band presenting a BMI value of approximately 5 cm⁻¹ or less (e.g. half the CU value of up to about 10CU)

Regarding claim 42, see Allen figure 4, element (11)

Regarding Claim 43, see Allen col. 4, lines 36-37.

Regarding Claim 44,45, see Allen col. 4, lines 57-61

Regarding Claim 52, see Allen claim 22

Regarding Claims 56 and 57, see Allen col. 8, line43-col. 9, line26.

Regarding claim 59 , see Allen col. 3, lines38-41

Regarding claims 60-62, , see Allen col. 5, lines 3-15

Regarding claims 63-64, see Allen Example 2

Regarding Claim 69, see Allen col. 4, lines 10-11

Regarding Claim 70 see above discussion on claim 41, 43, and Allen col.3,lines 59-63.

Regarding Claims 81 and 82, see Allen col. 4, lines 10-11

Regarding Claim 83, see Allen figure 4 and discussion of claim 41 above

Regarding claim 84, see Allen Figure 4.

Regarding Claim 85, see Allen col. 4, lines 57-61

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Regarding Claims 86 and 87, see Allen col. 4, lines 57-61

Regarding Claim 94, see Allen col. 8, line 43-col. 9, line 26 and Allen claim 22

Regarding Claim 95, see Allen col. 4, lines 10-11

Regarding Claims 99-100, see Allen col. 8, line 43-col. 9, line 26

Regarding claim 102, see Allen col. 3, lines 38-41

Regarding claims 103-105, see Allen col. 5, lines 3-15

Regarding claim 106-107, see Allen Example 2

Regarding claim 110, see Allen col. 3, lines 59-63

Regarding claim 112, see Allen col. 4, lines 10-11

Regarding claim 114, see Allen figure 4

Regarding claim 115, see Allen col. 3, lines 59-63

Regarding claim 116, see Allen figure 4

Regarding claim 118, see Allen Figure 4

Regarding Claim 119, see Allen col. 3, lines 59-63

Regarding claim 120, see Allen Figure 4

Regarding claim 121, see discussion of claims 41 and 44

Regarding claim 122, see Allen figure 4 and Allen col. 6, lines 59-63

Regarding claim 123, see Allen Figure 4

Regarding Claim 124, see Allen col. 4, lines 57-61

Regarding Claim 125, see Allen col. 4, lines 57-61

Claim Rejections - 35 USC § 103

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 41-65, 69-108, 110,112-116, and 118-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson (US 5,878,753) in view of Hampl (US 4,739,755) and Hampl (US 6,298,860 B1) and in further view of Allen (US 5,474,095)

With respect to independent **claims 41, 70, 83, 113, and 121**, Peterson teaches a paper wrapper for a cigarette and the cigarette comprising said wrapper and tobacco column as depicted in the instant reference Figures 1 and 2. Figure 2 teaches cigarette paper web presenting a plurality of “discrete circumferential bands” [**Claims 42, 84,122**] coated with a film forming composition wherein consecutive bands are spaced apart by untreated regions of paper web. The reference clearly teaches that the treated regions have “a preferred permeability less than 6 ml/min.cm² (Coresta), and generally within a range of 2-6 ml/min/cm².” (Column 5, lines 57-62) [**Claim 95**]

It is the Examiner's understanding that both the Coresta (CU) and BMI or "Burn mode index" represent alternate but effectively equivalent measures of porosity and in the instant case specifically describe the porosity of the treated region or bands. To this end, although Peterson discloses a Coresta value for the bands which reads upon the claimed range, the reference fails to disclose the treated band porosity as measured by the BMI value.

The patent to Hampl et. al. (US 4,739,775) provides insight into the BMI value and its relation to the CU. The Hampl reference relates the methods of acquiring a BMI value in addition to presenting an exemplary comparison between the Coresta value of a wrapper (30 CU) and its equivalent porosity as measured by BMI (14 cm⁻¹) (see Table 1). By the Hampl reference, it is the Examiner's understanding that the CU and BMI are related by an approximate 2:1 ratio (e.g. 30 CU:14 BMI). Therefore absent compelling evidence to the contrary, Peterson is understood to teach a treated band presenting a BMI value of approximately 3 cm⁻¹ or less (e.g. half the CU value of less than 6 CU) [**Claim 69, 81, 82, 112**].

Band Width and Band Spacing are Result Effective Variables Subject to Optimization

With respect the particular details of band width and spacing as required by **Claims 70 and 113**, the Peterson reference teaches that "Applicants have determined that, for the cigarettes tested, a minimum band width of 4mm is desired" (Column 6, Lines 3-4) [**claim 43, 85,124**] and that "In the cigarettes tested, applicants have found

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that a band spacing of between 5 and 10mm is appropriate” (Column 6, Lines 18-19)

[Claim 44, 45, 86, 87,125].

Peterson further sets forth both band spacing and band width as clear result effective variables subject to empirical optimization. Specifically, Peterson teaches that the “width and spacing of bands are dependent on a number of variables, such as the initial permeability of wrapper 14, density of tobacco column 12, etc”. The reference continues by teaching that the bands preferably have a width sufficient to limit the oxygen provided to the burning coal. The reference further asserts that the band spacing should not be so large as to promote burning through the bands, but not so small as to self-extinguish the cigarette in a free-burn state. Therefore, the band width and band spacing are held as result effective variables of the paper wrapper which one of ordinary skill in the art would be able to optimize through routine experimentation.

Number of Circumferential Bands is an Obvious Parameter in View of the Band Width, Band Spacing, and the Ordinary Level of Skill in the Art

With respect to Applicant's newly submitted **Claims 114, 116, 118, 120, and 123**, Peterson places neither explicit nor implicit limitations upon the number of bands applied to the paper wrapper, however the reference is silent regarding the particular limitation wherein the wrapper includes “up to three circumferential bands”.

In view of the above discussion regarding the result effective nature of band width and spacing, said limitation is not deemed to patentably distinguish the claimed invention over that disclosed in the Peterson reference when viewed in light of the

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ordinary level of skill in the art at the time of the invention. Specifically, one of ordinary skill in the art at the time of the invention would view the total number of circumferential bands as a dependent variable based at least in part upon the desired length of the tobacco rod in addition to the above noted optimized width and spacing of said bands. It follows, that Applicants claimed paper wrapper comprising "up to three circumferential bands" would reasonably have been derived through no more than routine experimentation over the prior art disclosure.

Peterson Cigarette is Construed to Pass the claimed "Cigarette Extinction Test"

Applicant's amended **claims 115, and 119** incorporate the limitation wherein the treated areas reduce the ignition proclivity of a smoking article "such that the smoking article self-extinguishes when lit and placed on filter paper".

With respect to the named test, Applicant is respectfully directed to Peterson (column 10, Lines 40-57) which states in pertinent part that the treated region (38) of the cigarette has a width "which is great enough to cause the cigarette to self-extinguish if it is dropped or otherwise left on a flammable substrate" (col. 10, lines 40-43). Again in view of the cited passage and absent compelling evidence to the contrary, the Peterson cigarette is construed self-extinguish if left on a flammable substrate and therefore construed to pass the claimed "Cigarette Extinction Test".

The instant reference further discloses that “Applicants have found that a non-aqueous solution of a solvent soluble cellulosic polymer with a particulate inorganic non-reactive filler suspended in solution works particularly well” (Column 6, Lines 25-28) **[Claim 52, 57, 58, 63, 64, 73, 94, 100, 101, 106, and 107]**. The reference continues by teaching that particularly well-suited fillers include titanium oxide or a “metal oxide” **[Claim 65, 72, 74, 108]** (Column 7, Line 5) and that ethyl cellulose acts as a preferred binder for the filler particles (Column 6, Lines 54-56) **[Claim 75]**. While the above coating composition sets forth a preferred embodiment, Peterson teaches that aqueous solutions **[Claim 56, 99]** which a variety of common film forming components include alginate, polyvinyl alcohol **[Claim 48, Claim 50, 90, 92]**. Although not expressly disclosed in the instant reference, one of ordinary skill in the art would recognize both polyvinyl acetate and starch as potential substitutes for the film forming component in the film forming composition **[Claim 49, claim 51, 71, 91, 93]**.

In discussing the mode of depositing the bands, Peterson discloses that the bands are deposited using a commercial gravure press in a 3 pass process **[Claim 46, 47, 79, 80, 88, 89]**. Said deposition produces a “ramp pattern” increasing gradually from 0% to 100% over the three printing passes (Column 11, Lines 26-57). The disclosed process is understood to vary the amount of film forming composition applied to the paper web by at least 1% between at least two of the layers **[Claim 53, 54, 96, 97]**.

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Now, Peterson fails to explicitly teach the application of an alkali metal citrate to the paper web to act as a “burn control additive”, however such an addition would have been readily obvious to one of ordinary skill in the art at the time of the invention. Again looking to the analogous teachings of Hampl (US 4,739,775), it is disclosed that “While the base cigarette paper may be conventional, it may contain small amounts of an ash conditioner, such as potassium citrate. However the amount of the ash conditioner must be below the level which causes the wrappers to support combustion of a cigarette in spite of the bands. (Column 4, Lines 52-58). It would have therefore been obvious to one of ordinary skill in the art at the time of the invention to modify the Peterson invention to include a burn control additive such as an alkali citrate [**Claims 60, 61, 62, 103, 104, 105**]. This would have been an obvious modification to one of ordinary skill seeking to promote ash formation in a cigarette article.

Additionally, while Peterson teaches the use of a particular commercially available brand of paper (e.g. Kimberly-Clark Corporation KC Grade 603 paper) with a porosity of approximately 35 CU, the reference fails to explicitly teach the use of a paper web having a permeability of greater than about 60 CU as required by independent Claims 41, 70, 83, and 113. That said, Peterson does teach that “Wrapper (14) may include any manner of commercially available cigarette wrapper,...It should be understood that any other manner of paper web may be used in this regard.”(Column 5, Lines 23-27).

Hampl (US 6,298,860 B1) teaches the use of a paper for constructing smoking articles having a basis weight from 18 gsm to 60 gsm [**Claims 59, 102**] and also having “a permeability of from about 5 Coresta units to about 80 Coresta units” (Column 2, Lines 46-51). Since the use of a cigarette paper having a porosity of about 80 Coresta units is known in the art of cigarette manufacturing and Peterson teaches that any manner of commercially available cigarette paper can be used in the disclosed invention, the use of a paper having a permeability of “greater than about 60 Coresta” or “greater than about 80 Coresta units” would have been obvious modification to the Peterson process at the time of the invention [**Claims 55, 76, 77, 78, 98**].

*(l) Wrapper properties and dimensions not explicitly disclosed by Peterson are rendered obvious in view of the newly discovered reference to **Allen (US 5,474,095)***

As noted in the grounds of rejection under 35 USC §102(b) above, the reference to Allen et. al. teaches a very closely related manufacture for a self-extinguishing cigarette wrapper and cigarette. Said wrapper comprises a plurality of annular bands of reduced permeability aligned along the long axis of the tobacco rod in a substantially identical manner to the Peterson wrapper. With respect to the materials and physical dimensions of the wrapper components, Allen teaches

- 1) a base paper having a permeability of at least about 60 Coresta (col. 4, lines 5-7),

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- 2) reduced permeability bands having a width of greater than about 4mm (col.4, lines 36-37),
- 3) reduced permeability band spacing at a distance of from about 10mm to about 30mm (col. 4, lines 57-60),
- 4) reduced permeability regions having a permeability of less than about 25 Coresta Units and preferably in the range of up to 10CU (col. 4, lines 10-12),
- 5) up to three bands of reduced permeability (figure 4),
- 6) a paper basis weight in the range of from about 18gsm to about 60gsm (col. 3, lines 38-42),
- 7) application of an alkali metal citrate salt burn additive to the base paper (col.5, lines 2-15), and
- 8) use of an inorganic particulate filler and cellulose derivative as for formation of the reduced permeability regions (Example 1-3)

(Please note: other wrapper properties not explicitly treated in the instant grounds of rejection are either made explicit in the rejection of claims under 35 U.S.C. §102(b) above and/or are deemed self-evident on a plain reading of the instant reference)

In view of the Allen reference, one of ordinary skill in the art at the time of the invention would have found it obvious to try the above noted materials and physical

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dimensions for the reduced ignition proclivity wrapper as disclosed in the Peterson reference. That is, said materials and wrapper dimensions have been successfully employed to the manufacture of reduced ignition proclivity cigarettes in the Allen reference. It follows that application of the same or similar materials and dimensions in the Peterson disclosed wrapper would constitute no more than an obvious extension over the collective prior art with a reasonable expectation of for the successful manufacture of a reduced ingnition proclivity cigarette.

Response to Amendment

The Declaration under 37 CFR 1.132 filed November 17,2009 is insufficient to overcome the rejection of claims 41-65,68-108, and 110-120 based upon Peterson '753, Hampl '755, and Hampl '860 as set forth in the last Office action because:

At the outset, the Examiner recognizes that it is improper to combine references where the references teach away from their combination. Applicant is however respectfully advised that in assessing whether a reference truly teaches away from a combination, the totality of the prior art must be considered. Further in accordance with Official practice, "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." In re Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).

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In the instant case, Applicant points to a passage (see page 2 of the instant reply) in the Peterson '753 reference which states in pertinent part that "if the change in permeability between the treated areas and untreated areas is *relatively great*, the smoker will discern a difference in taste and smoke delivery" (*emphasis added*). In a later passage, Applicant notes that Peterson indicates that it is advantageous to minimize the chance of discernible changes in smoke delivery and taste to a smoker. Applicant implies that use of a cigarette base paper of 60 Coresta would result in a "realtively great" difference between treated and untreated regions in the Peterson wrapper and asserts that, in his opinion, one skilled in the art would not have looked to use a wrapper of such a porosity in the prior art disclosed wrapper.

Applicants declaration has been carefully considered but is unpersuasive for at least the following reasons:

1) Applicants above conclusion that Peterson teaches away from use of wrapping paper having a permeability of greater than about 60 CU is predicated upon the assumption that use of a paper having a Coresta value of 60 in the Peterson wrapper would yield a "*relatively great*" change in porosity between treated and untreated areas of the wrapper which is consistent with the "*relatively great*" change described in the Peterson reference. It is however respectfully noted that Peterson provides no frame of reference for gauging this "relatively great" change in permeability between treated and untreated regions. That is, the Peterson reference provides neither

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explicit nor implicit guidance regarding what threshold relative change in porosity negatively impacts taste and smoke delivery and Applicant has presented no evidence to suggest what threshold change in relative permeability constitutes a "relatively great" change. It follows that Applicants allegation that use of a base paper of 60 CU in the Peterson wrapper would constitute unsubstantiated allegation and conjecture which is unsupported by any evidence on the record.

2) A teaching that minimizing differences between treated and untreated regions is advantageous or preferential is not equivalent to a explicit teaching away from the use of relatively higher porosity base paper or that use of such a paper in construction of the Peterson wrapper is in any manner inoperative. Rather, such a disclosure only indicates that use of relatively high permeability base paper may result in a wrapper that displays somewhat inferior properties to wrapper using a base paper with different porosity. Further, the affected properties of taste and smoke delivery appear on their face to be entirely subjective in nature and that a change in taste deemed unpalatable to one smoker may be perceived as pleasing or beneficial to another.

3) As noted in the grounds of rejection above, the newly discovered reference to Allen et. al. (US 5,474,095) discloses a self-extinguishing wrapper having annular bands of decreased permeability aligned perpendicular to the long axis of a tobacco rod. One of ordinary skill would view the Allen reference as very closely related to the Peterson reference for reasons made explicit above. Regarding the permeability of "treated" and

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"untreated" regions, Allen teaches that treated regions preferably have a porosity of up to about 10 Coresta (col. 4, lines 1—12) while the untreated base paper "normally" has a porosity in the range of about 25 to about 60 Coresta Units (col. 4, lines 5-7).

In view of Allen, one of ordinary skill would have viewed the use of a base paper of at least about 60 Coresta units would have been viewed as conventional in the arts. Therefore in consideration of the totality of the prior, including the newly discovered reference to Allen et. al., it is the Examiners assessment that the Peterson reference does not convincingly teach away from the use of a paper web having a permeability of greater than about 60 Coresta units.

Response to Arguments

Applicant has presented no arguments in addition to the discussion of the Declaration under 37 CFR 1.132. Applicants comments on said Declaration have been fully considered and a full and complete response is presented above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON L. LAZORCIK whose telephone number is (571)272-2217. The examiner can normally be reached on Monday through Friday 8:30 am to 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason L Lazorcik/
Primary Examiner, Art Unit 1791